

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV - ODW (x)

Plaintiff(s),

VS.

ORDER FOR CIVIL TRIAL:

Final Pretrial Conference:

Defendant(s).

Trial Date:

UNLESS OTHERWISE ORDERED BY THE COURT, THE FOLLOWING RULES SHALL APPLY:

SCHEDULING

1. In General

All motions to join other parties or to amend the pleadings shall be filed and served by the cut-off date specified in the Scheduling Order.

2. Motions for Summary Judgment or Partial Summary Judgment

Motions for summary judgment or partial summary judgment shall be filed as soon as practical, however, in no event later than the motion cut-off date.

3. Discovery Cut-Off

The Court has established a cut-off date for discovery in this action. All discovery shall be complete by the discovery cut-off date specified in the Scheduling Order. **This is not the date by which discovery requests must be served; it is the date by which all discovery is to be completed.**

In an effort to provide further guidance to the parties, the Court notes the following:

a. Depositions

All depositions shall be scheduled to commence sufficiently in advance of the discovery cut-off date to permit their completion and to permit the deposing party enough time to bring any discovery motion concerning the deposition prior to the cut-off date.

b. Written Discovery

All interrogatories, requests for production of documents, and requests for admission shall be served sufficiently in advance of the discovery cut-off date to permit the discovering party enough time to challenge (via motion practice) responses deemed to be deficient.

c. Discovery Motions

Whenever possible, the Court expects the parties to resolve discovery problems among themselves in a courteous, reasonable and professional manner. The Court expects that counsel will strictly adhere to the Civility and Professional Guidelines adopted by the United States District Court for the Central District of California in July, 1995.

Discovery matters are referred to a United States Magistrate Judge. **Any motion challenging the adequacy of responses to discovery must be filed timely, and served and calendared sufficiently in advance of the discovery cut-**

1 **off date to permit the responses to be obtained before that date, if the motion is**
2 **granted.**

3 Consistent resort to the Court for guidance in discovery is unnecessary and
4 will result in the appointment of a Special Master at the joint expense of the parties
5 to resolve discovery disputes.

6 **4. Mandatory Settlement Conference**

7 Pursuant to Local Rule 16-15, the parties in every case must select a
8 settlement procedure. The final meeting with the parties' settlement officer must
9 take place no later than 45 days before the Final Pre-trial Conference.

10
11 **FINAL PRE-TRIAL CONFERENCE ("PTC")**

12 This case has been placed on calendar for a PTC pursuant to Fed. R. Civ. P.
13 16 and 26. Unless excused for good cause, each party appearing in this action shall
14 be represented at the PTC, and all pre-trial meetings of counsel, by the attorney who
15 is to have charge of the conduct of the trial on behalf of such party.

16 **STRICT COMPLIANCE WITH THE REQUIREMENT OF FED. R. CIV. P.**
17 **16, 26 AND LOCAL RULES ARE REQUIRED BY THE COURT.** Therefore,
18 carefully prepared Memoranda of Contentions of Fact and Law, a Joint Witness
19 List, and Joint Exhibit List shall be submitted to the Court.

20 **Summary of Witness Testimony and Time Estimates.**

21 Counsel shall prepare a list of their witnesses, including a brief summary (two
22 to three paragraphs) of each witness's expected testimony, **what makes the testimony**
23 **unique** from any other witness testimony, an estimate of the length of time needed for
24 direct examination, and whether the witness will testify by deposition or in person.
25 Counsel shall exchange these lists with opposing counsel. **Counsel shall jointly file**
26 **a single list of witness testimony summaries, including estimates for direct**
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1 **examination of their own witnesses and estimates for cross-examination of**
2 **opposing witnesses.** The Joint Witness List shall contain a brief statement of the
3 testimony for each witness, and the time estimate for such testimony. The joint witness
4 testimony summaries shall be filed at the same time counsel lodge the PTC Order. If
5 a party intends to offer deposition testimony into evidence at trial, the party shall
6 designate the relevant portions of the deposition testimony to be read at trial and advise
7 opposing counsel of same. Opposing counsel shall then designate any additional
8 portions of such deposition testimony which counsel intends to offer in evidence. All
9 objections to any such testimony shall be made in writing and filed at the same time
10 counsel lodge the PTC Order so that the Court may consider whether ruling on the
11 objections will facilitate trial or result in the disposition of evidentiary matters that may
12 assist continuing settlement negotiations.
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15 If expert witnesses are to be called at trial, each party shall list and identify their
16 respective expert witnesses. Failure of a party to list and identify an expert witness
17 may preclude a party from calling an expert witness at trial. If expert witnesses are to
18 be called at trial, the parties shall exchange at the PTC short narrative statements of the
19 qualifications of the expert and the testimony expected to be elicited at trial. If reports
20 of experts to be called at trial have been prepared, they shall be exchanged at the PTC
21 but shall not substitute for the narrative statements required.
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23 **Pre-Trial Conference - Exhibit Stipulation.**

24 The parties shall prepare a Pre-Trial Exhibit Stipulation that shall contain each
25 party's numbered list of all trial exhibits, with objections, if any, to each exhibit
26 including the basis of the objection and the offering party's response. All exhibits to
27 which there is no objection shall be deemed admitted. The parties shall stipulate to the
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1 authenticity of exhibits whenever possible, and the Pre-Trial Exhibit Stipulation shall
2 identify any exhibits for which authenticity has not been stipulated to and the specific
3 reasons for the party's failure to stipulate.

4 The Stipulation shall be substantially in the following form:

5
6 **Pre-Trial Exhibit Stipulation**

7 **Plaintiff(s)'/Defendant(s)' Exhibits**

8 **Number** **Description** **If Objection, State Grounds** **Response to Objection**
9

10 The Pre-Trial Exhibit Stipulation shall be filed at the same time counsel lodge
11 the PTC Order. Failure to comply with this paragraph could be deemed to constitute
12 a waiver of all objections. **Do not submit** blanket or boilerplate objections to the
13 opposing party's exhibits. These will be disregarded and overruled. NOTE: Counsel
14 are instructed not to bring excessive exhibits to trial, but only those exhibits that will
15 actually be used.

16 The Memoranda of Contentions of Fact and Law, Witness List, and Exhibit
17 List are due twenty-one (21) days before the Final Pre-Trial Conference, unless a
18 different time is set in the scheduling order.
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20 **FINAL PRETRIAL CONFERENCE ORDER (“PTCO”)**

21 The proposed PTCO shall be lodged seven calendar days before the PTC.
22 Adherence to this time requirement is necessary for in-chambers preparation of the
23 matter. The form of the proposed PTCO shall comply with Appendix A to the
24 Local Rules and the following:
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1. Place in “ALL CAPS” and in “**bold**” the separately numbered headings for each category in the PTCO (*e.g.*, “**1. THE PARTIES**” or “**7. CLAIMS AND DEFENSES OF THE PARTIES**”).
2. Include a table of contents at the beginning.
3. In specifying the surviving pleadings under section 1, state which claims or counterclaims have been dismissed or abandoned, *e.g.*, “Plaintiff’s second cause of action for breach of fiduciary duty has been dismissed.” Also, in multiple party cases where not all claims or counterclaims will be prosecuted against all remaining parties on the opposing side, please specify to which party each claim or counterclaim is directed.
4. In specifying the parties’ claims and defenses under section 7, each party shall closely follow the examples set forth in Appendix A of the Local Rules.
5. In drafting the PTCO, the court expects that the parties will attempt to agree on and set forth as many non-contested facts as possible. The court will usually read the uncontested facts to the jury at the start of trial. A carefully drafted and comprehensively stated stipulation of facts will reduce the length of trial and increase jury understanding of the case.
6. In drafting the factual issues in dispute for the PTCO, the parties should attempt to state issues in ultimate fact form, not in the form of evidentiary fact issues. The issues of fact should track the elements of a claim or defense on which the jury will be required to make findings.
7. Issues of law should state legal issues on which the court will be required to rule during the trial, and should not list ultimate fact issues to be submitted to the trier of fact.

1 8. The Court may submit fact issues to the jury in the form of findings
2 on a special verdict. The issues of fact should track the elements of a claim or
3 defense on which the jury will be required to make findings.

4 9. If expert witnesses are to be called at trial, each party must list and
5 identify its respective expert witnesses, both retained and non-retained. Failure of
6 a party to list and identify an expert witness in the PTCO could result in a court
7 order which precludes the party from calling that expert witness at trial.

8 **TRIAL PREPARATION**
9 **MOTIONS, INSTRUCTIONS AND EXHIBITS**

10 **1. Motions in Limine**

11 Counsel shall meet and confer before noticing any in limine motions. If
12 motions in limine are filed, they shall be noticed for the hearing date set forth in
13 the Court's Scheduling and Case Management Order. Counsel are advised to
14 review the section on Motions in Limine in the Court's Scheduling and Case
15 Management Order.

16 All motions in limine will be ruled upon on or before the scheduled trial date.

17 **2. Jury Instructions/Special Verdict Forms¹**

18 Thirty-five (35) days before trial, plaintiff shall serve plaintiff's proposed jury
19 instructions and special verdict forms on defendant. Twenty-eight (28) days before
20 trial, defendant shall serve on plaintiff defendant's objections to plaintiff's
21 instructions together with any additional instructions defendant intends to offer.
22 Twenty-one (21) days before trial, plaintiff shall serve on defendant plaintiff's
23 objections to defendant's instructions. Twenty-one (21) days before trial, counsel are
24 ordered to meet and confer to attempt to come to agreement on the proposed jury
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27 ¹ This section only applies to jury trials.
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1 instructions. The parties shall make every attempt to agree upon the jury instructions
2 before submitting them to the Court. It is expected that counsel will agree on the
3 substantial majority of jury instructions.

4 Sixteen (16) days before trial, counsel shall file with the Court a JOINT set of
5 jury instructions on which there is agreement. Defendant's counsel has the burden
6 of preparing the joint set of jury instructions. At the same time each party shall file
7 its proposed jury instructions which are objected to by any other party, accompanied
8 by points and authorities in support of those instructions.

9 When the parties disagree on an instruction, the party opposing the instruction
10 must attach a short statement (one to two paragraphs) supporting the objection, and
11 the party submitting the instruction must attach a short reply supporting the
12 instruction. Each statement should be on a separate page and should follow directly
13 after the disputed instruction.

14 The parties ultimately must submit one document, or if the parties disagree
15 over any proposed jury instructions, three documents. The three documents shall
16 consist of: (1) a set of Joint Proposed Jury Instructions; (2) Plaintiff's Disputed Jury
17 Instructions; and (3) Defendant's Disputed Jury Instructions. Any disputed Jury
18 Instructions shall include the reasons supporting and opposing each disputed
19 instruction in the format set forth in the previous paragraph.

20 The Court directs counsel to use the instructions from the *Manual of Model*
21 *Jury Instructions for the Ninth Circuit* where applicable. Where California law is to
22 be applied and the above instructions are not applicable, the Court prefers counsel to
23 use the California Jury Instructions in CACI. If none of these sources is applicable,
24 counsel are directed to use the instructions in Devitt, Blackmar and Wolff, *Federal*
25 *Jury Practice and Instructions*.

Modifications of instructions from the foregoing sources (or any other form instructions) must specifically state the modification made to the original form instruction and the authority supporting the modification.

Each requested instruction shall be in the format specified by Local Rule 51-2 and shall be set forth in full; be on a separate page with the caption "COURT'S INSTRUCTION NUMBER ___"; be numbered; cover only one subject or principle of law; not repeat principles of law contained in any other requested instructions; and cite the authority for a source of the requested instruction. In addition to the foregoing, each party shall file with the Courtroom Deputy on the first day of trial a "clean set" of the aforesaid requested duplicate jury instructions. The "clean set" shall not cite the authority for a source of the requested instruction.

An index page shall accompany all jury instructions submitted to the Court. The index page shall indicate the following:

- the number of the instruction;
- a brief title of the instruction;
- the source of the instruction and any relevant case citation; and
- the page number of the instruction.

EXAMPLE:

<u>NO.</u>	<u>TITLE</u>	<u>SOURCE</u>	<u>PAGE NO.</u>
5	Evidence for Limited Purpose	9 th Cir. 1.5	9

During the trial and before argument, the Court will meet with counsel and settle the instructions. Strict adherence to time requirements is necessary for the Court to examine the submissions in advance so that there will be no delay in starting the jury trial. **Failure of counsel to strictly follow the provisions of this section**

1 may subject the non-complying party and/or its attorney to sanctions and
2 SHALL CONSTITUTE A WAIVER OF JURY TRIAL in all civil cases.

3 **3. Trial Exhibits**

4 Counsel are to prepare their exhibits for presentation at the trial by placing
5 them in binders which are indexed by exhibit number with tabs or dividers on the
6 right side. Counsel shall submit to the Court an original and one copy of the binders.
7 The exhibits shall be in a three-ring binder labeled on the spine portion of the binder
8 as to the volume number and contain an index of each exhibit included in the volume.
9 Exhibits must be numbered in accordance with Fed. R. Civ. P. 16, 26 and the Local
10 Rules. **NOTE:** Counsel are instructed not to bring excessive exhibits to trial, but
11 only those exhibits that will actually be used.

12 The exhibit list shall indicate which exhibits are objected to, the reason for
13 the objection, and the reason it is admissible. Failure to object will result in a
14 waiver of objection.

15 The Court requires that the following be submitted to the Courtroom
16 Deputy Clerk on the first day of trial:

- 17 • The original exhibits with the Court's exhibit tags, which shall be
18 stapled to the front of the exhibit on the upper right-hand corner with
19 the case number, case name, and exhibit number placed on each tag.
20 Exhibit tags can be obtained from the Clerk's Office, Room G-8, 312
21 North Spring Street, Los Angeles, CA 90012.
 - 22 • One bench book with a copy of each exhibit for use by the Court,
23 tabbed with numbers as described above. (Court's exhibit tags not
24 necessary.)
 - 25 • Three (3) copies of the exhibit list.
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- Three (3) copies of the witness list, which shall include the names of the witness in the order in which they may be called to testify.
- Counsel are ordered to submit a short joint statement of the case seven (7) days before trial that the Court may read to the prospective panel.
- All counsel are to meet not later than ten (10) days before trial and to stipulate so far as is possible as to foundation, waiver of the best evidence rule, and to those exhibits which may be received into evidence at the start of trial. The exhibits to be so received will be noted on the copies of the exhibit lists.
- Counsel may, but need not, submit brief proposed voir dire questions for the jury seven (7) calendar days before the Pretrial Conference. The Court will conduct its own voir dire after considering any proposed voir dire submitted by counsel.
- Any items that have not been admitted into evidence and are left in the courtroom overnight without prior approval will be discarded.

4. Real-Time Reporting Requirement

Each party must file with the Court, at the same time counsel lodge the FPTCO, a document for the Court Reporter that contains proper names, unusual or scientific terms, or any other foreign or uncommon words that are likely to be used by the parties during the FPTC and the Trial.

COURT TRIALS

1. Declarations of Witness Direct Testimony.

Counsel in non-jury trials submit the direct testimony of their witnesses in writing in a declaration executed under penalty of perjury. These declarations

1 shall be in admissible form with appropriate foundation established for the declarant's
2 statements. Paragraphs in each declaration shall be numbered consecutively to
3 facilitate the identification of paragraphs for evidentiary objections.

4 Counsel are to exchange and file these declarations with the Court at least
5 eleven calendar days before trial, unless otherwise ordered by the Court. Seven
6 calendar days before trial, counsel may file evidentiary objections to those
7 declarations. Counsel shall prepare a separate document for each declaration for
8 which they have an evidentiary objection in which they shall quote the specific
9 language from the declaration to which they object, followed by the objection and
10 any relevant argument. Counsel shall file any reply or response to the objections
11 by noon on the fourth calendar day before trial. Courtesy copies of the
12 declarations and evidentiary objections shall be deposited in the drop box located
13 in the entrance way to Chambers on the date due. **Do not submit** blanket or
14 boilerplate objections to the opposing party's witness declarations. These will be
15 disregarded and overruled.

16 At trial, the Court will rule on the evidentiary objections and, depending
17 upon the ruling, the declarations will be received in evidence, either in whole or in
18 part, or rejected. Counsel will then conduct the cross-examination and re-direct
19 examination at trial.

20 Failure to comply with the literal terms of this Order will result in sanctions
21 or the Court may refuse to allow that witness to testify.

22 **2. Trial Briefs**

23 Counsel for each party shall file and serve a trial brief, not to exceed
24 15 pages in length, at least seven (7) days before trial is scheduled to commence.
25 *See Local Rule 16-9.*

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Counsel for each party shall lodge and serve initial proposed findings of fact and conclusions of law with the trial brief. Counsel shall then:

- Counsel may agree with a part of a finding or conclusion, disagree with a part of it, and/or consider a part of it irrelevant.

Caveat: If counsel fail to file the required Pre-Trial documents or fail to appear at the Pre-Trial Conference and such failure is not otherwise satisfactorily explained to the Court: (a) the cause shall stand dismissed for failure to prosecute if such failure occurs on the part of the plaintiff; (b) default judgment shall be entered if such failure occurs on the part of the defendant; or (c) the Court may take such action as it deems appropriate.

Dated:

Revised: 05/01/07